

A 1608/685.

LIST
OF THE
LORDS,
WHO

Protested against some Proceedings, in
Relation to the Case of Dr. *HENRY*
SACHEVERELL, in the House
of PEERS; with their Lordships
REASONS for Entering their Pro-
testations.



LONDON:

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Die Martis 14. Martii 1709.

THE Question was put,

That by the Law and Usage of Parliament in Prosecutions, by Impeachments for High Crimes and Misdemeanors, by Writing or Speaking the particular Words supposed to be Criminal, are not necessary to be expressly specified in such Impeachments.

It was resolved in the Affirmative.

Dissentient,

1. Because we conceive the Law of the Land, is, *Buckingham,*
as much the Rule of Judicature in Parliament, as it *Jo. Ebor.*
is in the inferiour Courts of Justice; and since, by *H. London.*
the Opinion of all the Judges in all Prosecutions, *Hamilton.*
by Information or Indictment, for Writing or Speak- *Berkely Strat-*
ing; the particular Words supposed to be Criminal *ton.*
must be expressly specified in such Information or *Northeske.*
Indictment; and that this is the Law of the Land, *Dartmouth.*
confirmed by constant Practice; we conceive that *The. Roffen.*
there is the same Reason and Justice for specifying *Geo. Bath and*
in Impeachments, the particular Words supposed *Wells.*
to be Criminal, for otherwise, a Person who is In- *Mar.*
nocent and Safe by the Law, out of Parliament, *Haverham.*
may, nevertheless, be condemn'd in Parliament. For
we conceive, that some Reasons of Law and Ju-
stice, why the Words supposed Criminal, must be
specified in Informations and Indictments, may be,
that the Party accused may certainly know his
Charge, and be thereby enabled to defend his In-
nocence; that the Jury may know it too, and be
enabled thereby the better to apply the Evidence
given by the Witnesses, to the Matter of such
Charge; and that the Judges themselves may the
better judge of the Nature of the Crime, and of a
Punish-

Punishment adequate to it, which, in Cases of Misdemeanor, which are indefinite and innumerable, must extremely vary, according to the Heinousness of the Offence; and finally, that the House of Lords, upon Complaint to them, may also judge whether the Fine, which is usually one of the Punishments for Misdemeanors, does not exceed the Demerit, especially, since by the Bill of Rights, exorbitant Fines, are declared to be Illegal; which Reasons seem to be fully as strong, in the Case of Impeachments, as in Indictments and Informations; for the particular Words are as necessary to enable the Lords to determine uprightly and impartially, as the Jury or Judges, and as necessary for the Defence of the Accused here, as in the Courts below; and if there was to be a Difference, it seems more Necessary in this High Court; for the weightier the Prosecution is, the more need has an Unfortunate Man of Indulgence; and all lawful Favour; and surely, there cannot be a heavier Load upon any Man, than an Accusation of all the Commons of Great Britain.

2. We do not remember any Precedent insisted on for the Maintenance of this Resolution, save only the Case of Dr. *Manwaring*, which we conceive could not Warrant this Resolution. For 1. The Words charg'd upon him by the Commons Declaration, were not compar'd with the Sermons, tho' it was desired; and consequently, no Lord could say, they were not the Words of the Sermon; and therefore, upon such Uncertainty, we conceive, we could not ground a positive Resolution. 2. The Charge upon him taken out of his Sermon, on the 4th of May 1628. seems to be the very Words by him Spoke; for they were attested by Ear-Witnesses, who surely never were or could be admitted to attest their own Conjectures of the Scope of a Sermon, and not specify the very Words; for that would be to make the Witnesses to be the Judges. 3. Besides, in such a Case as this; where the Party did not insist on any legal and just Exceptions, of which he might have taken Advantage, if he had made his Defence, which he did not, but submitted and begg'd Pardon; this ought not to be look'd upon as a Precedent, or

Au-



Authority, to justify the Illegality of the Form of that Impeachment.

3. But altho' this Precedent was full, and expresse to the Point resolv'd, we humbly conceive, That one Precedent is not sufficient to support a Law and Custom of Parliament; nor consequently, a Resolution declaring it, for surely there is a great Difference, between a single Instance, and a Law and Custom, especially,

4. Since we conceive, that in all the Precedents, at least, all that have appear'd to Us, for Four Hundred Years, of the Prosecutions in Parliament; the particular Words, charg'd as Criminal, have been constantly express'd in the Articles, or Declarations of Impeachment.

Exilium Hugonis le De Spencer Patris & Filii. The Ed. 2.

1. Article was, for making a Bill in writing, The Tenour whereof was particularly set forth.

William de la Pool 6 Art. was for Words spoken 26. H. 3. by him, sitting in the Council in the Star-Chamber, viz. That he said, He had a Place in the Council-House of the French King as he had here; and was as well trusted as he was here, and could remove from the French King, the privyest Man of his Council, if he would.

Lord FINCH.

1640.

The Opinions he deliver'd, are set forth in *hac* Art. 4. Verba, as also the Times when he delivered them. 5.

Another Opinion deliver'd by him in the Exchequer-Chamber, and Western Circuit, is set down in his expresse Words. 7.

Dr. COSENS.

1640.

He is charg'd with Words, deliver'd in a Sermon at Durham. The Words were these, *The Reformers*, &c. Art. 11. 5.

Charges him with Words in like manner. The Words were these. *The King*, &c. 19.

BERKLEY.

1641.

The Words charg'd upon him are expressly mention'd. Art. 1.

That

4.

That he subscribed an Opinion *in hac Verba*.

5.

Which are specify'd.

6.

The Matter therein charg'd, tho' of Record, was copy'd, and deliver'd with the Articles.

7, 8.

The Words spoken, and the Place, expressly set forth.

1641.

Judge CRAWLEY.

Art. 1, 2, 3.

For subscribing and giving Opinions, set forth *in hac Verba*.

1641.

HERBERT.

For exhibiting Articles against the five Members; which Articles follow, in these Words, &c.

1641.

Thirteen Bishops impeach'd for making and promulging, in 1640, several Constitutions and Canons, contrary to the King's Prerogative, &c.

They demurr'd because the Charge was general; but receded from this Demurr, because it appear'd to be particular.

1641.

E. STRAFFORD.

Art. 2.

Expresses the Words spoken by him, and the Time.

4, 20, 21, 22,

23, 24, 25, 27,

26.

Express the very Words spoken by him
Is in like Manner, with an Inuendo of his Meaning.

1642.

Archbishop LAUD.

Art. 1, 4, 10.

2.

Express the Words spoken by him.

Expresses the Words spoken by him, and the Time and Place. So necessary did the Long-Parliament it self think it to pursue the Forms of Law in all their Prosecutions.

Upon the whole, therefore, we conceive, That so great a Number of Precedents is sufficient to outweigh the single Instance of Dr. *Manwaring's* Case, how apposite soever it may seem to be to the present Case, which, for the Reasons which we have mention'd, is far from being plain and clear, or having the full Authority of a Precedent: And the Law and Custom of Parliament, as we conceive, is

to be determin'd by constant Course and Practice, and not one Precedent; occasion'd by such odious Doctrines as those of Dr. *Manwaring's*: Nor can the contrary Assertion to the abovesaid Resolution be of any ill Consequence to Impeachments by the Commons; because it is easy for them to specify the Words which offend them, but extremely difficult for the Accus'd to defend himself without knowing them: And as all who are charg'd criminally have Leave to make their Defence, so they should also have allow'd to them all lawful Means for it.

*Jo. Ebor.
Scarsdale.
Anglesey.
Abingdon.
Weymouth.
Conway.
Willughby, Br.
Guilford.
H. London.
Leeds.
Suffex.
Nottingham.
N. Duresme.
Rocheſter.
Scarborough.
W. Cestriens.*

*Osborn.
Gernsey.
Lempster.
Thanet.
Denbigh.
Plymouth.
Northampton.
North and Grey.
Craven.
R. Ferrers.
Beaufort.
Yarmouth.
Berkshire.
Jersey.
Stawell.
Howard.*

Die Jovis, 16. Martii 1709.

THE Order of the 14th Instant, being read, for taking into Consideration, the Impeachment of Dr. *Henry Sacheverell*; Article, by Article.

And it being mov'd to declare, that the Commons had made good the first Article against Dr. *Henry Sacheverell*.

After

After a long Debate thereupon,
This Question was propos'd ;

*That the Commons have made good their first Article of
Impeachment, against Henry Sacheverell, Doctor
in Divinity.*

And a further Debate thereupon,
This Question was put ;

Whether this Question shall be now put.

It was Resolved in the Affirmative

Dissentient,

Because we humbly conceive, there are no Reflections therein contain'd, on the Memory of the late King *William*, nor the Revolution ; and that there is no Offence charged therein, upon Dr. *Sacheverell* ; against any known Law of the Land.

*Jo. Ebor.
Wemys.
Suffolk.
Shrewsbury.
Poulet.
Beaufort.
Denbigh.
Stawell.
Tarmouth.
R. Ferrers.
N. Duresme.
Scarsdale.
Howard.
Berkeley, Str.
Sa and Sele.
W. Cestriens.
Willughby Br.
Ormond.
Anglesey.
Rochester.
Buckingham.
Craven.
Weymouth.
Suffex.
Lexington.*

*Osborne.
Northesk.
Tho. Roffen.
Northampton.
Mar.
Leigh.
Weston.
Chandos.
Gernsey.
Hamilton.
Berkshire.
Thanet.
Scarborough.
Nottingham.
North and Grey.
Cowway.
Lempster.
Abingdon.
Geo. Bath and Wells.
Plymouth.
Guilford.
H. London.
Dartmouth.
Maverham.
Beeds.*

Then

Then the Main Question was put ;

That the Commons have made good their first Article of Impeachment, against Henry Sacheverell, Dr. in Divinity.

It was Resolved in the Affirmative.

Dissentient,

Because by the Laws of the Land, the Laws of *Buckingham.*
Parliament, and the inherent Right of Peerage, *e. Shrewsbury.*
every Peer is to Judge for himself, both of the Fact, *Dartmouth.*
as well as of the Law, and can't be precluded by *Guilford.*
any Majority ; which indeed must determine the *N. Duresme.*
Case, in respect of the Criminal ; but never did, nor *Willughby Br.*
can preclude any Lord, from Voting the Party Ac- *Haversham.*
cus'd Guilty or not Guilty of the Fact, as well as *Northesk.*
of the Crime of such Fact. *Mar.*

Suffex.

Northampton.

Tarmouth.

Scarborough.

W. Cestriens.

North and Grey.

Thanet.

Denbigh.

Weymouth.

Stawell.

Conway.

Howard.

Geo. Bath and Wells

Gernsey.

Craven.

Leeds.

Beaufort.

Scarsdale.

Rochester.

Fersey.

R. Ferrers.

Plymouth.

Osborne.

Leigh.

Abingdon.

Ashburnham.

To the Questions upon the 2d, 3d, and 4th. Articles we dissent, for the same Reason as is given against the Question upon the First.

Buckingham.

Berkshire.

Nottingham.

Rochester.

Weymouth.

Howard.

H. London.

Haversham.

Ormond.

Willughby, Br.

Gernsey.

Jo. Ebor.

N. Duresme.

Hamilton.

Suffex.

Scarsdale.

B

Stawell

Stawell.
Poulett.
Abingdon.
Conway.
Osborne.
Weston.
Guilford.
Lexington.
W. Cestriens.
Geo. Bath and Wells.
Beaufort.

Denbigh.
Tarmouth.
Jersey.
Thanet.
Plimouth.
Northampton.
Leigh.
Anglesey.
Craven.
Dartmouth.
Tho. Roffen.

Die

Die Sabbati 18. Martii, 1709.

IT is Order'd by the Lords Spiritual and Temporal, in Parliament Assembled, that the Question to be put to each Lord in *Westminster Hall*, shall be,

Is Henry Sacheverell, Doctor in Divinity, Guilty of High Crimes and Misdemeanors, charg'd on him by the Impeachment of the House of Commons? And the Answer thereunto shall be, Guilty, or, Not Guilty, only.

Dissentient,

1. Because we do humbly conceive, that the obliging every Lord to Answer generally, *Guilty, or, Not Guilty*, to a Question containing all the Articles of this Impeachment, is a kind of Tacking upon our selves, by an unnecessary joining of Matters of a different Nature, and subjecting them to one and the same Determination; and consequently may prejudice the Right every Peer has to give a Free Affirmative, or Negative; since, whoever thinks *Dr. Sacheverell*, Guilty of one Part, and Innocent of the other, will be oblig'd, either to Approve what he Condemns, or Condemn what he Approves.

2. We do humbly conceive, there is at least a Possibility, that tho' a Majority of the House, if admitted to Vote to the Articles separately, may think him Innocent upon each Article; yet, by this Method of a general Answer, he may be condemn'd of all; which seems not to be consistent with the usual Method of Justice in this House.

3. We humbly conceive, that since the Judgment of the House, in this Case, ought to be a Declaration of the Law, the Condition of the People will be most miserable, to have Punishment inflicted for high Crimes and Misdemeanors, and not to have a Possibility of informing themselves what the high

Crimes and Misdemeanors, thereby punished, are ; for the People's only Guide is the Law ; and they can never be guided by what they can never be inform'd of : And we do humbly conceive, That this Uncertainty being in the Case of a Clergyman, for Preaching, it may possibly create some Fear in good Men, when they preach some Doctrines of the Church of *England*, particularly that of Non-Resistance ; and may be made use of by ill Ones, as an Excuse for the Neglect of that Duty, which, upon some Occasions, is required of them, even by the Laws of the Land.

Ormond.
Scarsdale.
Denbigh.
Leeds. *
Nottingham.
Stawell.
Weymouth.
Craven.
Osborne.
Willughby, Br.
Haversham.
Geo. Bath and Wells
Beaufort.
Anglesey.
Northampton.
Lempster.
H. London.
R. Ferrers.

Poulett.
Howard.
Plimouth.
Guilford.
Leigh.
Berkshire.
Thanet.
Tarmouth.

Rochester.
Suffex.
North and Grey.
Abingdon.
Jersey.
Conway.
Weston.
Gernsey.

Die

Die Luna, 20 Martii, 1709.

THE House, pursuant to the Orders of *Saturday* last, adjourned into *Westminster-Hall*.

And being there, the House was resum'd, and the Lord-Chancellor declar'd, That the Lords had agreed upon a Question to be put to each Lord, severally.

Then his Lordship put the Question, beginning at the *Junior* Baron first, as follows:

Is Dr. Henry Sacheverell guilty of High Crimes and Misdemeanors, charged upon him by the Impeachment of the House of Commons?

And having asked every Lord present; and they having declared Guilty, or Not Guilty; his Lordship having cast up the Votes, declared him Guilty.

Dissentient,

Suffex.

Thanet.

Nottingham.

Craven.

Northesk.

North and Grey.

Leigh.

Fersey.

Hamilton.

Beaufort.

Weston.

Ormond.

Berkshire.

N. Duresme.

Shrewsbury.

Scarborough.

Leeds.

Tarmouth.

Jo. Ebor.

Lempster.

Northampton.

Willughby, Br.

Abingdon.

Poulett.

H. London.

Gernsey.

Geo. Bath and Wells.

Say and Sele.

Osborne.

Plymouth.

Chandos.

W. Cestriens.

Buckingham.

Rochester.

Mar.

Weymouth.

Guilford.

Conway.

[Anglesey]

Anglesey.
Scarfsdale.
Dartmouth.
Denbigh.
Howard.

Tho. Roffen.
Berkley Str.
Stawell.
Lexington,

Die

Die Martis, 21 Martij, 1709.

Then the House (pursuant to the Order Yesterday) took into Consideration what Censure to give upon *Henry Sacheverell*, Doctor in Divinity.

And it being propos'd as follows:

First, That Dr. *Henry Sacheverell* be enjoin'd not to Preach during the Term of Seven Years.

Secondly, That for the same Term of Years, he be made incapable of receiving any other Ecclesiastical Benefice, than what he now enjoys.

Thirdly, That he be imprison'd in the Tower, for Three Months until he find Sureties for his good Behaviour during the Term of Seven Years, before the Two Chief-Justices.

Fourthly, That his Sermons be burnt by the Hangman, at the Exchange, in the Presence of the Lord-Mayor, and Sheriffs.

Then the House took the propos'd Question into Consideration, Paragraph by Paragraph; and, after Debate upon the first Paragraph,

It was agreed to leave out the Word (Seven); and it being propos'd, instead thereof, to insert the Word (Three);

The Question was put,

Whether the Blank in the first Paragraph shall be fill'd up with the Word (Three)?

It was resolv'd in the Affirmative.

Then the Question was put,

That Dr. *Henry Sacheverell* shall be enjoin'd not to Preach during the Term of Three Years?

It was Resolv'd in the Affirmative.

Then the second Paragraph propos'd, was,

That Dr. *Henry Sacheverell* be made incapable of receiving any Ecclesiastical Benefice, for the Space of Three Years.

And after the Debate thereupon,

This Question was put,

That Dr. *Henry Sacheverell* be made incapable of receiving any further Ecclesiastical Benefice, during the said Term of Three Years?

It was resolv'd in the Negative.

Then the Third Paragraph propos'd, was,

That

That Dr. Henry Sacheverell shall be imprison'd in the Tower for Three Months, and until he find Sureties for his good Behaviour.

This was not insisted on.

Then the fourth Paragraph propos'd, was,

That Dr. Henry Sacheverell's Two Sermons be burnt by the Hangman, at the Exchange, in the Presence of the Lord-Mayor, and Sheriffs.

And after farther Debate, this Question was put,

That the Two printed Sermons of Dr. Henry Sacheverell, refer'd to by the Impeachment of the House of Commons, shall be burnt before the Royal-Exchange, by the Hands of the Common Hangman, in the Presence of the Lord-Mayor of London, and the Two Sheriffs, of London and Middlesex?

It was resolv'd in the Affirmative.

It is order'd by the Lords Spiritual and Temporal, in Parliament assembled, That the Judgment to be pass'd in the Case of Dr. Henry Sacheverell, shall be,

That Henry Sacheverell, Doctor in Divinity, shall be, and is hereby enjoined not to preach during the Term of Three Years next ensuing:

That Dr. Henry Sacheverell's Two printed Sermons, refer'd to by the Impeachment of the House of Commons, shall be burnt before the Royal-Exchange in London, between the Hours of Twelve and One, on Monday, the 27th Day of this instant March, by the Hands of the Common Hangman, in the Presence of the Lord-Mayor of the City of London, and the Two Sheriffs, of London and Middlesex.

Dissentient.

Jo. Ebor.	Guilford,	Astburnham,
Scarsdale,	Buckingham,	Denbigh,
Northampton,	Berkshire,	Nottingham,
Craven,	Abingdon,	Thonet,
Howard,	Conway,	Osborne,
North and Grey,	Plymouth,	Beaufort,
Scarborough,	H. London,	Anglesey,
N. Duresme,	Tarmouth,	Sussex,
Weymouth,	Tho. Roffen.	R. Ferrers,
Geo. Bath and	Guernsey,	Leigh,
Wells.	Leipster,	Posner.

FINIS

